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Mr Justice Swayne

SUPREME COURT OF THE UNITED STATES.

No. 184.

JOSEPH JASIGI AND THOMAS A. GODDARD, MERCHANTS AND CO-PARTNERS, PLAINTIFFS IN ERROR,

vs.

JAMES S. WHITNEY, COLLECTOR OF CUSTOMS AT THE PORT OF BOSTON AND CHARLESTOWN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

GOVERNMENT PRINTING OFFICE

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1 UNITED STATES, *ss:*

The President of the United States to the judges of the circuit court holden in and for the district of Massachusetts, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between Joseph Jasigi and Thomas A. Goddard, both of Boston, in said district, merchants and copartners, plaintiffs, and James S. Whitney, of Boston, in said district, collector of customs at the port of Boston and Chalestown, defendant, in a plea of the case, a manifest error has intervened to the great damage of the said Jasigi and Goddard, as in their complaint has been stated. And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that, if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States on the first Monday of December next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this twelfth day of November, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh.

H. W. FULLER, *Clerk.*

Allowed by—

NATHAN CLIFFORD,
Associate Jus. S. C. U. S., assigned to 1st circuit.

2 CIRCUIT COURT U. S.,
Mass. Dist., ss:

And now the judges of the said circuit court make return of this writ, by annexing hereto and returning herewith a true and attested copy of the record, and of all proceedings in the suit within named, under the seal of said circuit court, as herein commanded.

In testimony whereof, I, Henry W. Fuller, clerk of said circuit court, have hereunto set my hand and the seal of said court this twenty-fifth day of November, A. D. 1862.

H. W. FULLER, *Clerk.*

(Copy for adverse party filed.)

3 United States of America.

CIRCUIT COURT U. S.,
Massachusetts District, ss:

To James S. Whitney, of Boston, in said district, collector of the customs, &c., greeting:

You are hereby cited and admonished to be and appear before the chief justice and associate justices of the Supreme Court of the United States on the first Monday of December next, being the first day of said December, at Washington, the present seat of the national government, then and there to answer to a writ of error sued out from the clerk's office of the circuit court of the United States for the first circuit and district of Massachusetts, wherein Joseph Jasigi and Thomas A. Goddard, of said Boston, are plaintiffs in error, and you are defendant, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the U. S., this twenty-fifth day of November, eighteen hundred and sixty-two, and in the eighty-seventh year of the independence of the United States.

NATHAN CLIFFORD,
Associate Jus. Sup. C. U. S., Mass. Dist.

4 Received notice, and service in due form.

O. W. DELLISS,
U. S. Att'y for D'f't.

5 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Wednesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and sixty-two.

Before the honorable Nathan Clifford, associate justice, and the honorable Peleg Sprague, district judge.

Joseph Jasigi and Thomas A. Goddard, both of Boston, in the district of Massachusetts, merchants and partners, under the style of Jasigi, Goddard & Co., (and company,) plaintiffs, *vs.* James S. Whitney, of Boston, in said district, gentleman, and collector of the customs for the district of Boston and Charlestown, in our district of Massachusetts, defendant.

6 In a plea of the case, for that the said defendant, on the day of the purchase of this writ, being indebted to the plaintiffs in twenty thousand dollars for goods sold and delivered by the plaintiffs to the defendant, and in the same amount for work done, and materials for the same provided by the plaintiffs for the defendant at his request; and in the same amount for money lent by the plain-

tiffs to the defendant, and in the same amount for money received by the defendant, to the use of the plaintiffs; and in the same amount for money paid by the plaintiffs, for the use of the defendant, at his request; and in the same amount for money due from the defendant to the plaintiffs, for interest of money before then due and owing from the defendant to the plaintiffs, and by the plaintiffs foreborne to the defendant, at the defendant request, for a long time before then elapsed; in consideration thereof promised to pay the same amount to the plaintiffs on demand, yet he has not paid the same. And also for that on the first day of May, in the year of our Lord one thousand eight hundred and sixty, the said defendant, being indebted to the plaintiffs in the sum of twenty thousand dollars, demanded, exacted,

7 and received of the plaintiffs by the defendant, then and now collector of the customs for the revenue district of Boston and Charlestown, under color of a law of the United States, for the collection of duties on imports, (and by the plaintiffs paid under protest,) and before that time had and received by the defendant to the use of the plaintiffs, in consideration thereof promised them to pay the same when he should be thereto afterwards requested, yet the said defendant has not paid the same, or any part thereof, though thereto often requested, to the damage of the said plaintiffs, as they say, the sum of twenty thousand dollars.

The writ in this case bears date the first day of May, A. D. 1860, and this action was entered at the May term of this court in the same year, when and where the respective parties appeared by their counsel hereinafter named. The case was thence continued from term to term to this present term; and now the said plaintiffs file their specification of claim, as follows:

The plaintiffs claim $17,111 52, with interest from the date of the writ, for duties exacted from them on an importation of wool from Port Elizabeth, C. G. H., to Boston, by "Witch of the Seas," on or about the 14th day of March, 1860.

MILTON ANDROS,
Plaintiffs' Attorney.

8 And thereupon the following pleas are filed, namely:

And the said defendant, by R. H. Dana, jr., his attorney, comes and defends the wrong and injury, when, &c., and saith he did not undertake or promise, in manner or form, as the said plaintiffs hath above thereof complained against him. And thereof he puts himself upon the country, &c., by R. H. Dana, jr.; and the plaintiffs do the like, by their attorney, Milton Andros.

Issue being thus joined, the cause is committed to a jury duly sworn to try the same, who, having heard all matters and things concerning the same, return their verdict, in the words following, to wit:

The jury find that the defendant did not promise the plaintiffs in manner and form as they have alleged against him.

DUNCAN BRADFORD, *Foreman.*

9 Whereupon the defendant moves this hon. court for judgment on the said verdict. It is thereupon considered by the court that said James S. Whitney do recover of said Joseph Jasigi and Thomas A. Goddard his costs of suit, taxed at the sum of sixty dollars and eight cents.

Upon the trial of the above-entitled cause, after the evidence was closed on both sides, and before the issue was submitted to the jury, the defendant filed his bill of exceptions, which, being found in conformity with the truth, was allowed by the court, under the hand and seal of the presiding judge, and is in the words and figures following, to wit:

10 *Bill of exceptions.*

JOSEPH JASIGI & THOS. A. GODDARD
vs.
JAMES S. WHITNEY.

Be it remembered that at a term of the circuit court of the United States for the first circuit, holden at Boston, within and for the district of Massachusetts, on this fifteenth day of October, A. D. 1862, by the honorable Nathan Clifford, circuit judge, came Joseph Jasigi and Thomas A. Goddard, of Boston, in said district, merchants and copartners, under the style of Jasigi, Goddard & Company, and by action on the case declared against the said James S. Whitney, of said Boston, gentleman, and collector of the customs for the district of Boston and Charlestown, as by the writ and declaration of record will appear; to which the defendants pleaded the general issue, which was joined. And thereupon the cause came on for trial before the said circuit court, at said October term, before a jury empannelled for that purpose; and the plaintiffs then and there, to maintain and prove the issue on their part, submitted to the court and jury the documents and oral testimony, as follows, to wit:

11 Albert Hancom, called by the plaintiffs, testified that he is deputy collector for the port of Boston, and has been so for five years last past.

The witness produced the original entry of eight hundred bags of wool made by plaintiffs at the custom-house, Boston, on the sixteenth day of March, in the year one thousand eight hundred and sixty, and the original invoice accompanying said entry, and filed at the same time therewith, by which entry said goods are entered as free, and which entry and invoice, with the words and figures written thereon at the custom-house, (in red ink,) are as follows:

12 *Invoice of sheep's wool purchased by Edward Howland and shipped on board the bark "Witch of the Seas," Bartley, master, bound to Boston, and consigned to Messrs. Jasiga Goddard & Co., for their account.*

		Gro. weight.	Tare.	Net weight.	Price.					
I. G. H.										
No. 3228, 3413.	186 bales unwashed	68,766	1,860	66,906	*a* 14½*d.*	2,927	2	9		
No. 3413, 4026.	614 bales unwashed	238,795	6,140	232,655	*a* 10¾*d.*	10,421	0	1		
	800 bales.	307,561	8,000	299,561		13,348	2	10		
Less discount						104	3	00	£	*s. d.*
									13,243	19 19
	CHARGES.									
800 wool bags, at 5*s*						200	0	00		
Harbor dues 3*d.* per 100 lbs. English						40	8	10		
Coolies, cartage, delivery, &c						47	2	9		
									287	11 7
									13,531	11 5
Commission on 2½ p. c. on £13,531 11 5									338	5 8
Due February 1, 1860									13,869	17 1

PORT ELIZABETH, 31*st December*, 1859.

EDWARD HOWLAND,
p. SAM'L W. HEAL.

April 10, 1860.—Notified of addition, and ordered to deliver the goods under his bond. B. L. W.

CUSTOM-HOUSE, BOSTON, *Collector's Office, March* 16, 1860.

I certify that this invoice has been examined, and the articles therein.

J. W. PRESTON, *D'y Col.*

Add to make market value at Port Elizabeth, at date of exportation, on 186 bales, 3 farthings pr. lb	209	1	7			
on 614 " ½ pr. lb	484	13	11	693	15	16
Commission, 2½				17	4	10
				£14,850	19	5

Jasigi et al. vs. Whitney.

5

13 INWARD FOREIGN ENTRY.

(Sold by Benj. Loring & Co., stationers, 120 & 122 State street, Boston.)

Entry of merchandise imported by Jasigi, Goddard & Co., in the Br. bark Witch of the Tees, Bartley, master, from Port Elizabeth, C. G. H., arrived March 14, 1860.

I. G. H.—Numbers, inclusive, 3228, 3413, 3413, 4026; 186 and 614 bales wool—Dtch W., 299,501—£13,869 17*s.* 1*d.*

14 *Owner's oath in cases where goods, wares, and merchandise have been actually purchased.*

I, Tho's A. Goddard, do solemnly and truly swear that the entry now delivered by me to the collector of Boston and Charlestown, contains a just and true account of all the goods, wares, and merchandise imported by or consigned to Jasigi, Goddard & Co., in the Witch of the Tees, whereof Barkley is master, from Port Elizabeth; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, of all charges thereon, including charges of purchasing, carriages, bleaching, dyeing, pressing, finishing, putting up and packing, and no other discount, drawback, or bounty, but such as has been actually allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them. And I do further solemnly and truly swear that I have not, in the said entry or invoice, concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise, and that if, at any time hereafter, I discover any error in the said invoice, or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district: so help me God.

THO'S A. GODDARD.

Sworn to this 16 day of March, 1860, before
J. W. PRESTON, *Deputy Collector.*

Consignee's, importer's, or agent's oath.

I, , do solemnly and truly swear that the invoice and bill of lading now presented by me to the collector of Boston and Charlestown are the true and only invoice and bill of lading by received of all the goods, wares, and merchandise imported in the , whereof is master, from , for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, accord-

ing to the said invoice and bill of lading; that nothing has been on my part, nor, to my knowledge, on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise, and that if, at any time hereafter, I discover any error in the said invoice or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly swear that, to the best of my knowledge and belief,

the owner of goods, wares, and merchandise, mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost, or fair market value, at the time or times and place or places when and where procured, of the said goods, wares, and merchandise, all the charges thereon, and no other or different discount, bounty, or drawback, but such as has been actually allowed on the same: so help me God.

Sworn to this —— day of ——— 18—, before

———— ————,

Deputy Collector.

15 The importer presents the invoice to the entry clerk, and he notes that it is presented as free. The clerk has only the invoice. If by that the goods seem free, he marks "free" on the face of the invoice.

That all the words and figures named by him (in red ink) were written on the entry and invoice at the custom-house. Said witness also produced the general bond of plaintiffs, bearing date the 24th day of January, A. D. 1860, to obtain the delivery of such portion of the merchandise imported by them as should not be designated for examination and appraisement; which bond is as follows:

(*Form* 77.)

16 Know all men by these presents that we, J. Jasigi and Thomas A. Goddard, merchants and doing business in the city of Boston, State of Mass., under the firm of Jasigi, Goddard & Co., as principals, and Richard Frothingham, jr., of said city, as surety, are held and firmly bound unto the United States of America in the sum of five hundred thousand dollars, for the payment whereof to the United States we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents, as witness our hands and seals, this 24th day of January, eighteen hundred and sixty.

The condition of this obligation is such that if the above-bounden obligors, or either of them, or either of their heirs, executors, administrators, or assigns, shall deliver, or cause to be delivered, to the order of the collector at the port of Boston, within ten days after the package or packages, designated by the collector and sent to the public store to be opened and examined, shall have been appraised

and reported to him, each and every package or packages of each and every importation of foreign merchandise which shall be made by the said obligors, at any time within six months from and after the date of these presents, and delivered to them in pursuance of the act of Congress of the 28th May, 1830; or if within the ten days aforesaid any of the said packages shall be opened without the consent of the collector or surveyor given in writing, and then in the presence of one of the inspectors of the customs; or if the said package or packages shall not be delivered to the order of the collector, according to the condition of this bond, and the above-bounden obligors shall pay to the proper collecting officer of said port double the estimated value of the package or packages of merchandise aforesaid, then this obligation is to be void; otherwise, to remain in full force and virtue.

And the above-bounden obligors do, for themselves, their heirs, executors, administrators, and assigns, covenant and agree with the United States that the collector of the customs aforesaid shall endorse on this bond the estimated value of each importation, as made, and the date thereof, and that the penalty of this bond shall be held to be double the value of each importation, as made, and endorsed as aforesaid; and that the value of the importation, where there is no violation of the conditions of this bond, shall not in any way affect the liability in those cases where there shall be a violation thereof.

Sealed with our seals, this 24th day of January, one thousand eight hundred and sixty.

J. JASIGI. [SEAL.]
THOS. A. GODDARD. [SEAL.]
R. FROTHINGHAM, Jr., [SEAL.]
By T. A. G., *Att'y.*

Sealed and delivered in presence of—
N. GALE.

17 165.—*Jasigi, Goddard & Co.*

Man.				Dr.	Man.	Cr.
39	Jan'y	24,	1860	2,933	39	2,933
198	March	8,	"	754	198	754
198	"	8,	"	1,627	198	1,627
198	"	8,	"	230	198	230
198	"	10,	"	979		
216	"	16,	"	67,133		
275	"	29,	"	47,876		
274	April	3,	"	18,471	274	18,471
320	"	9,	"	37,436	320	37,436
689	May	16,	"	1,403		
656	"	24,	"	59,836		
656	"	24,	"	11,581		
1004	June	11,	"	1,853	1004	1,853
1004	"	11,	"	20,706	1004	20,706
1272	July	10,	"	1,716	1272	1,716
1544	"	28,	"	549	1544	549

18 Said witness also testified as to the meaning of certain words and figures not made by him appearing on said entry and invoice, and made at the custom-house, as known to him from the usual course of business, and stated such usual course of business, and that on the 12th day of April, 1860, the sum of $16,937 28 was paid by the plaintiffs on account of the duties claimed by the collector on said wool, and on the 11th of May, 1860, the further sum of $174 24, as a balance of duties claimed on final liquidation, which was assessed for the excess of actual weight over invoice weight. That duties are considered as paid when finally liquidated; the amounts paid in the interim are deposits or partial payments on account.

Said witness also produced the permit under which all of said wool, except that retained for examination, was delivered to the plaintiffs, and also the permit under which the portion held for examination was subsequently delivered to the plaintiffs, which are as follow: the bales not sent for examination having been delivered to the plaintiffs March 16, and those sent for examination having been delivered March 17.

19 *Manifest No.* 216.

PORT OF BOSTON AND CHARLESTOWN,
March 16, 1860.

We certify that Jasigi, Goddard & Co., having secured to be paid the duties on the merchandise contained in the following packages, in conformity to the entry thereof of this date, which merchandise was imported in the B. R. Witch of the Tees, Bradley, master, from Port Elizabeth, permission is hereby granted to deliver the same, viz:

I. G. H.	3228 *a* 3413.	One hundred and eighty-six bales wool.	Free.
	3413 *a* 4026.	Six hundred and fourteen bales wool.	

C. D. LINCOLN, *Deputy Naval Officer.*
J. W. PRESTON, *Deputy Collector.*

To the inspector of the port aforesaid.

Examination permit—Man. No. 216.

Deliver from the public store the following packages of merchandise, imported by Jasigi, Goddard & Co., in the Witch of the Tees, for P't Elizabeth:

I. G. H.—Eighty bales wool,—packages of—

J. W. PRESTON, *Deputy Collector.*

To the public storekeeper.

MARCH 17, 1860.

20 Henry Crocker, called by plaintiffs, testified that in March, 1860, he was one of the principal appraisers of the United

States at the port of Boston; that the course of business of the appraisers was upon the receipt of the entry and invoice from the collector to examine and ascertain what packages were ordered for examination, which is always stated on the face of the invoice, and which he finds on the face of this invoice; then, to find the value of the goods and the date of the sailing of the ship. The usual mode is for a clerk in the appraisers' office to transcribe daily from the record in the custom-house the days of sailing of vessels entered the day before. I find on the invoice, in my handwriting, in red ink, with a circle round it, "sailed January 28th," which must mean 1860. This, I presume, I derived from the clerk, but I have no recollection of the fact in this case. The date of sailing is always transferred from the list of the clerk to the face of the invoice; after that, the list is considered of no importance, and not preserved.

That the packages of wool, in this case, which were ordered up for examination, were brought to the appraiser's store at the custom-house, and landed on the sidewalk or lower floor. That they
21 were examined by the appraisers, and that he certified on the invoice that it was right, and sent it to the collector.

This was, doubtless, before the permit for the delivery of the examination packages. That, subsequently, on Fast day, which was an early day in April, he was requested by Emory, one of the general appraisers, to come to his house. That he met there a Mr. Odell, of New York, who said there was some neglect. The next day the collector asked witness to call at his office. He gave me no directions, but informed me that Mr. Odell had some information, and he requested me to consent that a Mr. Bausch should come on from New York and assist me in a re-examination of this wool, he being wool examiner in New York. I told him that we recognized no New York examiner here. Witness consented that there should be a re-examination, and that Mr. Bausch should come on. That he and Mr. Bausch went to various places and stores to find the wool, and went through a re-examination, added three farthings per pound to the value of 186 bags, and half-penny per pound to the value of 614 bags of the wool, and wrote it on the invoice in the words
22 and figures following: "Add to make market value at Port Elizabeth at date of exportation, *a* 186 bales 3 farthings per lb., Crocker, appr., 614 ½ per lb.;" and then having prefixed the word "not" to the word "right," which had been written on the face of the invoice by him at the time of the original appraisment, he returned the invoice to the collector. That the examination of the wool thus made took place on the 7th day of April, and that the date was written by him on the face of the invoice. The following entry, written on the face of the invoice, was admitted to have been made by Mr. B. L. Wales, deputy collector, and it was admitted by defendant that the notice, as thereon mentioned, was given to and received by the plaintiffs.

"April 10, 1860. Notified of addition and ordered to deliver the goods under his bond.

"B. L. W."

The plaintiffs put in evidence a protest made by them to the collector, and delivered at its date, which is as follows:

F. 216.

To the collector of the port of Boston and Charlestown:

23 We object to the payment of the duties demanded by you on sheep's wool, unmanufactured, imported by us in the barque Witch of the Tees, from Port Elizabeth, Cape of Good Hope, and protest against the exaction of the same on the following grounds:

I. Because, under the provision of Schedule I of the tariff act of March 3d, 1859, said wool being of the value of twenty cents per pound or less at the port of exportation, was entitled to entry without the payment of any duty whatever.

II. Because said wool was duly appraised and certified by the appraiser on the examination ordered by the collector pursuant to law to be correctly charged in the invoice, and was appraised at the value therein charged at less than 20 cents per pound, which appraisement and certificate were conclusive as to the value of said wool, no appeal being taken by the importers.

III. Because the pretended appraisement, by virtue of which duties are demanded, was unauthorized by law, and illegal in

24 form and substance.

1st. Because none of the packages described in the invoice were ordered to the public store for examination and appraisement, or there opened and examined by the appraiser.

2d. Because said pretended appraisement was made on the suggestion of the collector of customs for the port of Boston, and under the influence, direction, and dictation of a person not holding the office of an appraiser for the port of Boston, or any other port, and who was not authorized by law to make any examination of the merchandise, or to make or direct any appraisement thereof.

3d. Because said pretended appraisement was made without any evidence whatever that the merchandise described was of any other or greater value than that stated in our invoice and declared by us on entry.

4th. Because the appraiser not by all reasonable ways and means in his power, ascertain, estimate, and appraise the actual market value or wholesale price of the goods in the principal markets of the country, or at the port of exportation, at the period of expor-

25 tation, whence the same were imported into the United States, but unlawfully adopted the opinion of a person not authorized by law to examine said goods or make an appraisement thereof, whereby said appraisement became and was void and of no effect.

5th. Because the appraiser in said pretended appraisement, assumed to appraise the goods at the market value at Port Elizabeth at the date of exportation, whereas he should have appraised the same at the value at the port of exportation.

6th. Because in the pretended appraisement of the goods in question, the appaiser did not appraise the same at the actual market value

or wholesale price thereof in the principal markets of the country from which the same were imported into the United States at the period of exportation to the United States.

7th. Because the appraisement was not made as of the period of exportation to the United States.

8th. Because the appraisement thereof was not made as of the date of exportation to the United States.

26 9th. Because said appraisement thereof was not made as of the time of purchase, whereas it should have been made either as of the date of exportation, period of exportation, or as of the time of purchase.

10th. Because said appraisement and the certificate thereof is not signed by any appraiser.

IV. Because said appraisement was not made and ordered in accordance with the laws of the United States or the lawful regulations of the Secretary of the Treasury.

V. Because there is no designation on the invoice of the packages to be opened and examined, nor did the said collector, in fact, designate one package in ten, or any packages of said merchandise for opening and examination.

VI. Because a duty was assessed upon the costs, charges, and commissions:

(Jasigi, Goddard & Co., man. 216 f. Page 1119; date May 1, 1860.)

Because, in the pretended appraisement of said merchandise, the appraiser did not appraise the same at the actual market value or wholesale price thereof at the port of exportation, at the

27 period of exportation to the United States.

And we pay the duties only to get possession of our merchandise, intending to reclaim said duties thus illegally exacted.

JASIGI, GODDARD & CO.

The plaintiffs also read in evidence the deposition of Samuel W. Heal, to which defendant objected, on the ground that the proof was inadmissible, and which is as follows:

28 I, Samuel W. Heal, of lawful age, on oath depose and say, in answer to interrogatories propounded to me by Milton Andros, esq., counsel for plaintiffs:

1. Please state your age, place of business, and residence.

Answer. I am twenty-five. My place of business is at Port Elizabeth, Cape of Good Hope. I reside there.

2. Whether or not you was at Port Elizabeth during the months of December, 1859, and January, 1860?

Answer. I was.

3. Whether or not at any time during either of those months a bark, "Witch of the Tees," was at said port?

Answer. She was.

4. State whether or not you know when said bark sailed from Port Elizabeth; and if so, when was it?

Answer. She sailed on Sunday morning, the first of January, 1860.

5. State, if you know, for what port she sailed, and to whom she was consigned.

Answer. She sailed for Boston, Massachusetts, and was con-
29 signed to Jasigi, Goddard & Co.

And in answer to cross-interrogatories propounded by Chas. L. Woodbury, esq., counsel for the defendant:

1. How long have you resided at Port Elizabeth, and what occupation have you followed there?

Answer. Three years and a half. I have followed a general business, and during a part of the time was clerk with Mr. Howland, and before that was clerk with A. Wares & Co.

2d. What are your means of knowing when the bark sailed?

Answer. I cleared her from the custom-house the day before, and was on the beach when she sailed.

3d. Is there any roadstead near the port where the bark may have anchored after she sailed?

Answer. No sir; except round at Cape Town, Table Bay, which is about five hundred miles distant. I saw the bark off to sea as far as she was visible; she stood right out to sea, and I watched her out of sight.

4th. Do you still reside at Port Elizabeth, and when do you
30 purpose to return there?

Answer. I still reside there, and intend returning the latter part of this week.

(Signed) SAMUEL W. HEAL.

Upon this evidence the plaintiffs rested their case; where-
31 upon, at the motion of the counsel for the defendant, the court ruled and instructed the jury that on the whole evidence the plaintiffs were not entitled to recover in this action, and consequently that their verdict should be for the defendant.

Whereupon the counsel for the plaintiffs did then and there except to the aforesaid rulings and directions of the honorable court, and thereupon the jury returned a verdict for the defendant in the words following, to wit:

The jury find that the defendant did not promise in manner and form as the plaintiffs in their declaration have alleged.

And inasmuch as the matter referred to, and the several instructions of the honorable court so objected to, do not appear by the record of the verdict aforesaid, the counsel on the part of said plaintiffs prayed the honorable court to set their seal to this bill of exception, containing the several matters proved and given in evi-
32 dence, and the rejections, rulings, and directions of his honor, the judge, thereupon and the exceptions thereto; all of which being found to be true are allowed.

NATHAN CLIFFORD, [L. S.]
Associate Justice Sup. C. U. S., presiding.

A true record. Attest: H. W. FULLER, *Clerk.*

UNITED STATES OF AMERICA,
Massachusetts District, ss:

I, Henry W. Fuller, clerk of the circuit court of the United States for the first circuit, Massachusetts district, do hereby certify that the foregoing is a true copy of the record and of all proceedings in the cause of Joseph Jasigi & Thomas A. Goddard *vs.* James S. Whitney in this court.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at Boston, in said district, [L. S.] this twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-two, and of the independence of the United States the eighty-seventh.

H. W. FULLER, *Clerk.*

Filed 6 Dec., 1862.

Supreme Court of United States.

DECEMBER TERM.

IASIGI, IN ERROR,

VS.

WHITNEY.

BOSTON:
PRINTED BY ALFRED MUDGE & SON, 34 SCHOOL STREET.
1864.

Supreme Court of United States.

DECEMBER TERM, 1863.

IASIGI, IN ERROR, *vs.* WHITNEY.

PLAINTIFF'S POINTS AND AUTHORITIES.

Summarily stated this case stands thus:

1. Plaintiffs imported from Cape of Good Hope 800 bags of coarse wool which they entered on March 16, 1860, as free, under schedule I, of Act of March 3,1857, as being of the value of twenty cents or less. (Hanscom's testimony, invoice, and entry. Record, pp. 4, 5, and 6.)

2. The examination packages were duly examined by the appraisers, and the plaintiff's entry by a written memorandum, endorsed on the invoice, declared by the appraisers to be "right" and then returned to the collector. (Crocker's testimony, Record, p. 10.) [N. B. The Record copy of invoice is imperfect.]

3. All but the examination packages were delivered to plaintiff under the general bond, on March 16, and the examination packages after appraisement, on March 17. (See permits, Records, p. 9.)

4. Nearly a month afterwards, viz., April 10 (see memorandum at foot of invoice, p. 5), one Mr. Odell, of New York, (probably a rival in trade), "who said there was some neglect,"

induced the Collector to request one of the appraisers to consent to a re-examination of the wool, with the aid of one Mr. Bausch, of New York, a wool examiner.

They went to various places and stores to find the wool, and then added three farthings per pound to a part and a half penny to the rest of the wool (to bring it above twenty cents); put the word "not" before the word "right" on the original invoice and returned it to the Collector. (Crocker, Record, p. 10.)

5. In making this appraisement by which the plaintiff's wool was subjected to a duty, the appraisers, by mistake of their clerk, fixed the date of the ship's sailing (the period at which the market value is to be ascertained, 20 Howard, 571) twenty-seven days after the true date. (Crocker, Record, p. 10; Heal's deposition, pp. 12, 13, .)

6. That on the same April 10, Wales, the Deputy Collector, notified plaintiffs of the addition and ordered them to deliver the goods under their bond. (Memorandum at foot of invoice, p. 5; defendant's admission, p. 10.)

7. That plaintiffs, then, under protest (Record, p. 11), paid as deposit or partial payment, $16,397.00 on April 12, and on the final liquidation of the duties, May 11, paid the balance of the same, fixed at $174.24. (Record, p. 9)

I. The first question raised by these facts is, whether when an appraisement has been once made and the merchandise surrendered to the importer, can they, in absence of fraud, afterwards, and how long afterwards, be again subjected to appraisement and the duties increased or levied anew.

1. Aside from the practical difficulties not to say absurdities, that the exercise of such a power during an unlimited period would produce, it would seem to be settled both by Act of August 30, 1842, section 17 and by authority and in reference to Custom House appraisers that "when power or jurisdiction is delegated to any public officer or tribunal over a subject-matter and its exercise is confided to his discretion, the acts so done are in general

binding and valid as to the subject-matter. The only questions that can arise between an individual and the public are power in the officer and fraud in the party. All other questions are settled by the decision *unless an appeal or other revision are provided for.* (Belcher *vs.* Linn, 24 Howard, pp. 508–522.) So as to all questions of fact, even those which are to be derived from commercial information, the Court has said "the appraisers are by law the tribunal to determine this question. Their decision is conclusive upon the importer *as well as the Government.* (Stairs *vs.* Peaslee, 18 Howard, pp. 522–527.) See also Bartlett *vs.* Kane, 16 How. pp. 263–272; Rankin *vs.* Hoyt, 4 How. pp. 327–375; Burgess *vs.* Converse, 2 Curtis, pp. 216–221.

2. The question then arises, Has the law provided for any "appeal or revision" *at the instance of the Collector*, and if so, was the provision of law followed or attempted to be followed in this case?

The second section of the Act of 1830, May 28 (4 Stat. at Large, 409), authorizes the Collector when he shall deem an appraisement too low, to order a re-appraisement. Clearly this is to be done upon the return of the appraisers and before the Collector's *fiat* that all is right and a permit and delivery made to the importer, otherwise if unlimited in point of time, the goods may be found in the hands of innocent vendees and subjected to the burthen.

Again, such new appraisal is to be made by all "the principal appraisers or by three merchants." In this case it was done by one appraiser only (Crocker) and a wool examiner from New York, and consequently was not within the act. Further, perhaps upon the true construction of the act such appraisal is confined to cases where the original appraisement has been made by the assistant appraisers, for whose appointment provision is made by the same section. If so as the original appraisement in this case was not by such assistant, but by a principal appraiser, the act has no application.

3. If the 17th section of the Act of August, 1842, as well as the authorities did not make it clear that one appraisement confirmed and acted on, and surrender made of the goods to the importer is final and conclusive against all parties, yet the entire policy of the revenue acts, which requires prompt and immediate action on the part of the importer to have his rights, in case of controversy, settled as against the government before the permit is granted, and the property surrendered demonstrates that nothing is intended to be left for revision or future action. Indeed, any other view that should give the collector the right to order re-appraisements, except as provided in section 2, Act of May 28, 1830, must include the power to exercise such right after duties have been paid and the merchandise distributed for consumption, if haply the Collector can find them, as in this case, and of course being unlimited in time, might render the accuracy of such future appraisement wholly precarious.

II. But not only was the re-appraisement, after permit and delivery, unauthorized by law, but if it were otherwise, its defects and irregularities are such that it could not be sustained, and these defects are distinctly stated in the protest.

1. It was not made as of the date of exportation, viz., the period of the ship's sailing, but is of a period twenty-eight days subsequent. (Crocker, p. 10; Heal's deposition, pp. 12–13.)

Whether this error or the interference of the New York party (Odell) led to the increased valuation, and so cost the plaintiffs this struggle, does not appear, but there was no conflict of evidence as to fact. At all events, it should, if doubtful, have been submitted to the jury.

2. Under the Act of March 3, 1851, sect. 1 (9 Stat. at Large, 629), the appraisement should have been made as "of the actual market value or wholesale price thereof in the principal markets of the country from which the same shall have been imported into the United States." Now the only return of this re-appraisement is on the invoice (record p. 5), and is in these words, "add to make market value at Port Elizabeth at date of

exportation;" (then follows the statement of farthings added.) Now although the Court may not judicially know the fact that there are other ports of exportation in the colony of the Cape of Good Hope, and other principal markets of British Eastern Empire, yet the appraisement itself must clearly show that there are none other than Port Elizabeth, or that the appraisement was made in conformity to the Statutes, or it is defective.

III If then this appraisal was either unwarranted or defective, and the protest points out with requisite distinctness these difficulties, the question rises, Is plaintiff entitled to redress himself by suit, or is his only remedy by appeal to the Secretary of Treasury, pursuant to Statute of March 3, 1857, Sect. 5 (11 Stat. at Large, p. 195)? That section provides that "*on the entry* of any goods, &c., (after July 1), the decision of the Collector" *as to their liability to duty, or exemption therefrom*, shall be final and conclusive against the owners, &c., unless the owner, &c., within ten days, give notice to the collector in writing of his dissatisfaction, stating specifically his grounds of objection, and within thirty days applied to the Secretary of Treasury, whose decision shall be final, "and the same goods, &c., *shall be liable to duty or exempted therefrom, accordingly*."

1st. Now if we are right in the view that the re-appraisement was illegal, then only the original appraisement remains, and from that the plaintiff had no occasion to appeal, as it exempted their goods from duty.

2. But if this were otherwise, and if the ordering a re-appraisement could by law be sustained, still the defects and irregularities of that re-appraisement entitle the plaintiff, after protest, to maintain this suit, and he is not put to any appeal, nor does the above section of the Act apply to his case.

The fifth section of the Act of 1857 has reference solely to goods *the character or composition* of which brings, or may bring, them within the free list. Upon a controversy whether, by reason of that character or composition, they are duty free, the collector is to decide with the right of the importer to appeal to the

Secretary. The Act has no reference to cases where, from *the cost of the article in a foreign market*, it may be dutiable or not. Where the *question of cost* is involved, it is to be settled by the appraisers, with the right of appeal to "two discreet and disinterested merchants, whose appraisement shall be final," (Act, 30th August, 1842). and not to the Secretary.

The Act of 1857 does not provide for a double appeal. Indeed, the position of the Secretary is not one in which he can determine, on appeal, the *value of articles in a foreign market*, and there is no provision for taking evidence by the party appellant to lay before him.

3. Nor are the parties bound, in any case of irregular and improper discharge of their functions by appraisers, to make any appeal whatever, even to merchant appraisers. The law gives an appeal, not to correct irregular proceedings, but to correct, if need be, the errors of judgment or estimates of values committed by the original appraisement. In case of irregularities of conduct, all that is required of the importer is to point them out clearly by protest, and then, if not corrected, and he is compelled to pay the duties, may at once sue the collector.

Burgess *vs.* Converse, 2 Curtis, 216.

IV. Finally, the sufficiency of the protest (Record, p. 5), as pointing out with distinctness the objections and the grounds of those objections on which plaintiffs now rely, cannot, we think, be disputed, nor that it was seasonable (Marriott *vs.* Brane, 9 Howard, 619), and having paid the duties, under this protest, and after notice from the collector to redeliver the goods under the bond (Admission, p. 10, foot of invoice, p. 5, conclusion of protest, p. 12), plaintiffs ask the judgment of the Court.

S. BARTLETT & MILTON ANDROS,
for Plaintiffs.

UNITED STATES SUPREME COURT.

IASIGI *vs.* WHITNEY.

REPLY OF PLAINTIFFS IN ERROR.

I.

Defendant relies on the point that the payment was voluntary, and not to "obtain the goods"—pursuant to Act 1845, sec. 1. We reply:

1. If the right is limited to payments made to obtain *possession* of goods, parties to whom delivery has been made, on giving bond under the Statute, would be remediless for duties illegally exacted.

2. Where bond is thus substituted for the property, payment to "obtain goods" must be construed to mean payment to obtain a release from the bond thus given in substitution.

3. If then the Collector, after one appraisement has been made, declares it to be void, orders a new one, which he notifies the importer is the true one, and calls upon him within the period prescribed by his bond to restore the goods or pay the duties, does not the party who pays those duties under protest pay them to obtain his goods—viz., the discharge of his bond within the meaning of the act?

4. If this be not so, then it might well be contended that in all cases of illegal appraisement, even of the grossest character, the importer who pays duties in pursuance of it under protest, can never recover back his money. The Government may say to him, your bond was to restore the goods on the order of the Collector at any time within ten days after the packages sent to the public store "have been appraised and reported to the Collector." As there has, on your own showing, been no *legal* appraisement, you should not have paid your money when notified on your bond, but litigated the question under the bond, you have not therefore paid your money to obtain your goods, and are now remediless.

5. The answer is, it is not in the power of the Government to say to the importer: We notified you wrongly and without any lawful right to restore the goods under your bond, or pay what we exacted. Your payment was voluntary, and we shall retain it.

II.

This Court has declared, "it seems sufficient to sustain an action, whether under the act of February 26, 1845, or under the principles of the common law, if the duties were not legal and were demanded and paid under protest. (3 Howard, 256; see 13 Peters, 263, 277, 4 Met., 181; 3d Cush., 573.)

III.

The conclusion of the protest shows what was the fact, viz.: that the collector not only notified plaintiffs under their bond, but actually took the goods into custody.

S. BARTLETT,
For Plaintiffs.

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The conclusion of the protest shows what was the fact, viz.: that the collector not only notified plaintiffs under their bond, but actually took the goods into custody.

S. BARTLETT,
For Plaintiffs.

In the Supreme Court of the United States.

No. 184.

DECEMBER TERM, 1863.

JOSEPH JASIGI *et al.*, plaintiffs in error,
vs.
JAMES S. WHITNEY, collector of customs at the port of Boston and Charlestown.

Error to the circuit court of U. S. for the district of Massachusetts.

819

In the Supreme Court of the United States.

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DECEMBER TERM, 1863.

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vs.
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Error to the circuit court of U. S. for the district of Massachusetts.

BRIEF FOR DEFENDANT.

STATEMENT OF FACTS.

This is a suit brought to recover the sum of $17,111 52, being an amount alleged to have been illegally exacted, and which was paid by the plaintiffs under protest, as the duties on two lots of wool, containing eight hundred (800) bales in all, imported by them into the port of Boston.

The writ is dated May 1st, A. D. 1860. By the bark Witch of the Tees the plaintiffs imported from Port Elizabeth, Cape of Good Hope, two lots of wool, one of one hundred and eighty-six (186) bales, invoiced at ten pence half penny (10½ *d.*) per pound, and the other of six hundred and fourteen (614) bales invoiced at ten and three-quarters pence (10¾ *d.*) per pound, each of the lots being, according to the invoice, worth twenty cents or less per pound at the place of exportation, and so free of duty under the act of March 3d, 1857, ch. 92, sec. 3. (11 Stat. at Large, p. 194.)

The wool was entered at the custom-house in due form on the sixteenth (16th) of March, A. D. 1860, and all of it, except eighty bales, detained for examination by the appraisers, was delivered to the plaintiffs, and the delivery indorsed on a general bond given by the plaintiffs. This bond was given in accordance with the regula-

tions of the Treasury Department issued after the passage of the act of May 28th, 1830, ch. 197, sec. 4. (4 Stat. at Large, p 409; Treasury Regulations, 1857, pages 147, 148.)

Eighty bales of the wool were sent to the appraisers' store, examined by them at once, and delivered to the owner on the seventeenth of March, 1860, and the appraiser certified to the collector that the invoice was right.

Subsequently to this examination and delivery, Mr. M. F. Odell, who was then a general appraiser at New York, came to Boston, notified the collector that he had some information as to the value of this wool, and that it was greater than the invoice price. The collector thereupon sent for Mr. Crocker, the local appraiser, who had examined the wool, and Mr. Odell communicated to them both the particulars of his information; in consequence of which the collector requested Mr. Crocker to re-examine the goods, and this Mr. Crocker proceeded to do. (Record, page 10.) This re-examination was made on the seventh day of April. The result of it was, that Mr. Crocker altered his certificate by inserting the word "not" before "*right*," and by adding at the foot of the invoice as follows: "*Add to make market value at Port Elizabeth at date of exportation on* 186 *bales three farthings per pound; on* 614 *bales* ½ *per pound. Crocker Appraiser.*" (Record, pp. 5 and 10.)

This appraisement made the value of the wool more than twenty cents per pound, and the wool therefore dutiable under the acts of July 30, 1846, (9 Stat. at Large, p. 46,) and of March 3, 1857, ch. 92, sec. 3. (11 Stat. at Large, p. 194.) And the collector thereupon assessed the duties accordingly, and on the tenth of April notified the plaintiffs of the addition, and ordered them to deliver the goods under their bond. (Record, page 10.)

The wool, when the second appraisement was made, was not at the public store, but in the owners' custody, and the examination was made in various warehouses where the wool was stored. (Record, page 10.)

A part of the duties, amounting to $16,937 28, was paid April 12, 1860. (Record, page 9.)

A protest was filed May 1, 1860, and this suit was begun the same day.

The balance of the duties claimed on final liquidation ($174 24) for excess of actual weight over invoice weight was paid on the 11th of May, A. D. 1860.

ARGUMENT.

I. The plaintiffs cannot in this action object to the re-examination of their goods by the appraiser and to his final report, according to which the duties were assessed and collected, if that was an appraisement authorized by law.

When goods subject to *ad valorem* duties are imported into any port, they are by law to be submitted to the appraisers, that their dutiable value may be ascertained.

Act March 3, 1851, ch. 38, secs. 1 and 17. (9 Stat. at Large, p. 629.)

This provision of the statutes applies as well to goods on which the duty *begins* or *ceases* according to value as to those where the duty *increases* or *diminishes* according to value. Both are to be appraised. (Rankin *vs.* Hoyt, 4 How., 327.)

The appraisers are to determine the dutiable value of the goods and to make a certificate thereof.

Act March 3, 1851, ch. 38, secs. 1 and 17. (9 Stat. at Large, p. 629.)

This certificate is by statute to be deemed the appraisement.

Act March 3, 1851, *ante.*

And the appraisement unappealed from is conclusive evidence of the dutiable value of the goods.

Belcher *vs.* Linn., 24 How., 516.

If an importer is dissatisfied with the appraisement, he has his remedy by an appeal to merchant appraisers.

Act March 3, 1851, ch 38, sec. 17.

This remedy is exclusive; and if an importer does not avail himself of it, the law deems the appraisement conclusive against him.

Belcher *vs.* Linn, 24 How., 516.

The only case in which anything is to be found militating against these views is that of Burgess *vs.* Converse, (2 Curtis, C. C. R., 216,) in which Judge Curtis says, that if there is any irregularity in the action of the government appraisers, the importer, if he would avail himself of it, should go directly to a jury, and that an appeal to merchant appraisers waives all such irregularity. This statement should be received with great caution. It was not an opinion on a point arising in the case or essential to its decision. For in that case there had been an appeal. It is a view of the law not sustained by any case in this court, and is wholly irreconcilable with the current of the decisions of this court upon the powers and duties of appraisers, and especially with the latest decision on this point in the case of

Belcher *vs.* Linn; Rankin *vs.* Hoyt, 4 How., 327; Greely *vs.* Thompson, 10 How., 225; Bartlett *vs.* Kane, 16 How., 268; Stairs *vs.* Peaslee, 18 How., 524; Sampson *vs.* Peaslee, 20 How., 571; Belcher *vs.* Linn, 24 How., 516.

In the case of Belcher *vs.* Linn, the court, speaking of appraisers, say, "the only questions which can arise between an individual and the public, or any person denying their validity, (*i. e.*, of their acts,) are power in the officer and fraud in the individual." (24 How., p. 522.)

In this case, as the record finds, there was no appeal by the importer. The final report of the appraiser is therefore to be deemed the appraisement, and fixes conclusively the dutiable value of the goods, unless it was made without authority, was an act beyond his power, and was therefore not in law an appraisement.

The only question, therefore, which is open to the plaintiffs, is that of the power of the appraiser to review his appraisement.

If he has this power, then his final report in this case, in accordance with which the duties were assessed and collected, and from which there was no appeal, concludes the plaintiff's rights.

That an appraiser has the right to review his action and to reconsider his report, was decided by this court in the case of Bartlett *vs.* Kane, 16 How., 263.

And that the collector may direct him to do it is expressly provided by statute. Act May 28, 1830, ch. 147, sec. 2, (4 Statutes at Large, p. 409.)

The language of that statute is as follows:

"*If the collector shall deem any appraisement of goods too low he shall have power to order a re-appraisement, either by the principal appraisers or by three merchants designated by him for that purpose, who shall be citizens of the United States, and cause the duties to be charged accordingly.*" Ibid., 4 Statutes at Large, p. 409.

This act is still in force. It has never been expressly repealed. It is not repealed by any necessary implication.

Constructive repeals of revenue and collection laws are not favored. There must be a positive repugnancy between the provisions of the new law and the old to work a repeal by implication; and even then, the old law is only repealed to the extent of such repugnancy. Wood *vs.* The United States, 16 Peters, 342; The United States *vs.* Sixty-seven Packages, 17 How., 85; McCool *vs.* Smith, 1 Black., 471.

It is difficult to know what statutes can be relied on as working a constructive repeal of the second section of the act of May, 1830. The only statutes suggested are the seventeenth section of the tariff act of 1842, (act August 30, 1842, ch. 270, sec. 17,) and the second and third sections of the act of March, 1851, ch. 38.

The seventeenth section of the act of 1842 gives to importers dissatisfied with an appraisement an appeal to merchant appraisers. It is not easy to see how the grant of this privilege to an importer is inconsistent with or repugnant to the right to require a re-appraisement already conferred on collectors by a previous statute. It places the importer's rights in this respect on the same footing with the already existing rights of the government.

The second section of the act of March 3, 1857, provides, that "*the certificate of any one of the appraisers shall be taken and deemed to be the appraisement.*"

This section establishes a rule of evidence; it had no other purpose, and can have no further effect.

The third section of the same act creates the office of appraisers at large.

By no construction can it be contended that this section modifies the act of May, 1830, sec. 2, beyond substituting the *appraisers at large* created by that section, to perform the duties which would devolve on *three* merchants under the last clause of the act of 1830.

Whether it modifies the act of 1830, even to this extent, is doubtful. United States *vs.* 1,406 Boxes Sugar, United States District Court, New York, July 1, 1862; per Smalley, J.

The second examination by the appraiser and his final report, whether made at his own suggestion on hearing Mr. Odell's statement, or at the request of the collector, was therefore within the scope of his authority, and is conclusive on the plaintiffs.

The plaintiffs' protest states various objections to the details of the appraisement. The answer to these objections is the same as that already made. The appraisement unappealed from is conclusive. The report of the appraisers is conclusive, not only as to the result, the dutiable value of the goods, but also as to all the elements necessary to form this result—conclusive as to what are the principal markets of the country, (18. How., 524,) as to the date of exportation, the market value of the goods, &c. It is a conclusive finding upon all the facts on which the appraisers are obliged to pass, in order to discharge their duty—*i. e.*, to determine the dutiable value of the goods

imported and submitted to them. If an importer is not content with the result, or with any detail of their finding, or with their conduct in any respect, his sole and his sufficient remedy is by an appeal to merchant appraisers in the mode pointed out by the statute. If he does not avail himself of the right of appeal, he has no reason to complain that the government exacts the duties assessed on his goods. His refusal to appeal indicates that in his opinion the appraisement is substantially correct, and that he must rest his claim to recover the duties solely on technical grounds.

II. If the appraiser's re-examination of the plaintiffs' goods and his final certificate was without authority, and therefore invalid, the first certificate must stand; and the plaintiffs case is, in substance, this: they object to paying the duties, because the collector, without authority, levied a duty on goods which, according to the invoice value and the appraiser's report, were free.

The answer to this objection is conclusive.

The decision of the collector that the wool was dutiable, of which notice was given to the plaintiffs on the tenth of April, 1860, and under which the duties were paid, and from which there was no appeal, is conclusive upon the plaintiffs.

By the act of March 3, 1857, ch. 98, § 5, (11 St. at L., p. 195,) the collector of the port is to decide whether goods imported at any port are liable to duty or exempt therefrom; and his decision is final and conclusive, unless written notice of dissatisfaction with such decision is given him within ten days after entry of the goods and an appeal taken to the Secretary of the Treasury within thirty days after the collector's decision.

The functions of the collector in performing this duty are judicial. He is to decide. In making this decision he acts as a tribunal; and the decision is a judgment, conclusive and binding, unless there is an appeal taken in the time and mode prescribed by the statute.

U. S. *vs.* Arredondo, 6 Pet., 691, pp. 729, 730; Treasury regulations, June, 1857.

No appeal was taken by the plaintiffs, at any time before suit brought, to the Secretary of the Treasury.

They were notified of the collector's decision on the 16th day of April, A. D. 1860. (Record, pages 5 and 10.)

They paid the estimated duties on the 12th day of the same April (Record, page 9.)

And they filed their protest on the 1st day of May, A. D. 1860, and began this suit the same day. (Record, p. 12, p. 3.)

III. The plaintiffs did not pay the duties to obtain their goods and have therefore no right of action to recover the money so paid.

By the act of February 26, 1845, ch. 22, § (5 St. at L., p. 727,) the right of action against collectors is given only to those persons who have paid money as and for duties under protest, *in order to obtain goods, wares, or merchandise imported by them.*

In this case the record finds that the plaintiffs had in fact possession of the goods long before they paid the duties. All the goods, including the examination packages, were delivered to them on the 17th day of March. The duties were not paid till the 12th day of April. (Delivery permit; Record, p. 9.)

If, therefore, the words *to obtain* in the statute mean *to get actual possession of goods imported,* the plaintiffs have no case. They certainly did not pay the duties to obtain actual possession of them, for this they already had.

The only ground upon which they can rest their right to maintain this action is, that under the condition of the bond given by them to the collector on the 24th day of January, A. D. 1860, he might, at any time within ten days from the appraiser's report, have required them to re-deliver the goods into his custody; that these goods were, therefore, during that period within his control and power, and were consequently, in theory of law, for that time in his possession.

But this doctrine of constructive possession will not help the plaintiffs' case.

They did not even pay the duties to secure their possession of the goods from the collector's right, if any, to require their re-delivery under the bond.

The collector's constructive possession of the goods, his control over them, if he had any at any time, continued only during the time in which the condition of the bond was in force, and that had expired in this case before the duties were paid.

The condition of this bond is, that the obligors shall deliver to the order of the collector, within ten days after the packages *designated and sent to be examined* shall have been appraised and reported to the collector, every package of every importation which shall be made to them within six months from its date. (Record, pp. 7 and 8.)

But these packages of the plaintiffs' goods, *i. e., the packages des-*

ignated and sent to the public store for examination, were examined and reported to the collector on or before the seventeenth of March. The notice to re-deliver under the bond was not given to the plaintiffs until the tenth day of April, more than twenty days after the appraiser's report on the examination packages, and after the collector's right to require their re-delivery had expired. (Record, pp. 10 and 5.)

The second examination was not of the packages sent to the public store for inspection, &c., by the appraisers. These packages were no longer in the possession of the government; they had been delivered to the importers. It was of all the goods imported, and was made in the various warehouses where the plaintiffs had stored them.

The time covered by the condition of the bond within which the collector might require the re-delivery of the goods, had expired before the attention of the appraiser was called to the error and undervaluation in his first report. This happened early in April. (Record, p. 10.)

The government had parted with the possession of the goods, and lost all power over them, and the examination packages had been delivered on the 17th of March, at least a fortnight before. But the duties, as a debt of the importers, still existed, though the delivery had deprived the government of one mode, and that the usual one, for collecting them, by compelling the importer to pay them *to obtain his goods.*

The loss of this form of remedy did not, however, deprive the collector of the right, under the act of May, 1830, (*ante,*) to request the appraisers to reconsider their report, or of the appraisers to review it voluntarily if they saw fit, or of the government to demand of the plaintiffs, and to exact by suit, if necessary, the proper duties on this importation; but it makes a payment of the demanded duties by the plaintiffs without suit, voluntarily, and not a payment to obtain their goods, and leaves them, therefore, no right of action under the statute to recover the amount paid.

This is true if the second examination of all the goods in the various warehouses where they were stored was properly made, and the duties properly levied in accordance with it, for that examination was not, as already stated, the examination spoken of in the act of 1845, *i. e.*, an examination of the packages designated and sent to the public store and within the government control; *a fortiori*, this is true if this second examination was unauthorized and void, and therefore no

examination in law, as the plaintiffs contend, for, in that case, the legal power of the appraisers was at an end upon their examination and report on the 17th of March, and any control the collector might have had over the plaintiffs' goods under the condition of this bond was unquestionably at an end in ten days from that time, and long before the payment was made.

IV. Even if the collector could have compelled the re-delivery of the goods under a valid bond, taken in the form prescribed by the statute; yet the bond actually given in this case was not in the form required by law, but in a different form—was unauthorized and void, and gave the collector no right to require their return.

The act of May 28, 1830, authorizes an importer, in case he desires to receive the packages of any importation not designated for examination, to give a bond with approved security in double the estimated value of such goods, conditioned that they shall be delivered to the order of the collector at any time within ten days after the packages sent to the public stores shall have been appraised and reported to the collector. Act May 28, 1830, ch. 147, sec. 4. (4 St. at L., p. 410.)

The form and condition of this bond is fixed by the statute.

It is a bond to be given on a single importation in a specified sum, namely, double the estimated value of the goods.

The bond in this case does not conform to these requirements. It is not given for a single importation, but is a general bond for a term named. Its amount is not fixed in the mode prescribed by the statute, nor are the conditions those of the statute.

It may be said, however, the bond is given in conformity with the regulations of the Treasury Department. Treasury regulations 1857, §§ 230, 233.

But this does not alter the case. These regulations cannot give validity to a bond which is without authority of law.

The power of the Secretary of the Treasury is to make regulations in aid of and to enforce the laws, and to secure their uniform execution, but not to supersede them. Andrews on Rev. Laws, p. 270.

When Congress has thought fit to leave the forms of bonds to the Secretary of the Treasury, it has expressly provided so.

"The Secretary of the Treasury shall prescribe the form of the bond to be given for the transportation of goods, &c., from a port in one collection district to a port in another collection district." Act March 28, 1854, ch. 30, § 6. (10 St. at L., p. 270.)

But in this case, the act of Congress authorizing the importer to take his goods upon giving a bond, prescribes in express terms the form of the bond to be taken.

The bond being prescribed by the statute, neither the Secretary of the Treasury nor any other officer has power to modify its terms, or to alter its conditions, or to vary its amount, however much such a modification may, in his judgment, facilitate the public businesss, or conduce to the convenience of importers, and although the form suggested by him would effect the same result with less inconvenience. He cannot depart in any particular from the language of the statute. Andrews Rev. L., pp. 271–2, and cases cited.

The bond given by the plaintiffs in this case did not conform to the statute. It was, therefore, unauthorized and without force and void, and it could not have been used either to compel payment of the duties, or penalty, or re-delivery of the goods. The plaintiffs' payments, therefore, were not in any sense to obtain or to secure their goods. They were voluntary, and no action will lie to recover the amounts.

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